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APR 27 2018

JERRY MOBERG  
& ASSOCIATES

8 SUPERIOR COURT OF THE STATE OF WASHINGTON  
9 FOR PIERCE COUNTY

10 L.K.M., individually, and on behalf of her  
11 daughter C.K.M., and J.M.,

Plaintiffs,

12 vs.

13 BETHEL SCHOOL DISTRICT; THOMAS  
14 SIEGEL, in his individual capacity,  
15 ROBERT MAXWELL, in his individual  
16 capacity; NANCY McKEEMAN, in her  
17 individual capacity; MEGAN NELSON, in  
her individual capacity; CLIFFORD  
ANDERSON, in his individual capacity;  
TOM GIFFORD, in his individual capacity;  
HEIDI MILLER, in her individual capacity;  
and JOHN/JANE DOES 1-5, in their  
individual capacities,

18 Defendants.

19 NO. 16-2-13359-8

20 FIRST AMENDED  
21 COMPLAINT FOR DAMAGES

22 COME NOW the above-named Plaintiffs, by and through their counsel, Loren A.  
23 Cochran, Nicholas B. Douglas, and Pfau Cochran Vertetis Amala, PLLC, and by way of claim  
24 state:

25 I. PARTIES

26 1.1 Plaintiffs L.K.M., J.M. and C.K.M. were, at all relevant times, residents of  
Pierce County, Washington.

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1           1.2    C.K.M. was a minor student enrolled at Bethel High School in the Bethel  
2           School District (“Bethel”) in Pierce County, Washington, under compulsion of the laws of the  
3           State of Washington, including but not limited to RCW 28A.225 et seq.

4           1.3    Defendant Bethel is a public corporation organized under the laws of the State  
5           of Washington and is authorized to be sued in such corporate capacity for its acts and those of  
6           its agents and employees. Defendant has its primary place of business in Pierce County,  
7           Washington, and is subject to the provisions of Title 28A of the Revised Code of Washington.  
8           At all times material, Defendant Bethel operated, and otherwise exercised control over, the  
9           public schools within the school district, including Bethel High School, for the benefit of the  
10           school-aged children residing in the school district. Bethel is responsible for all conduct of  
11           agents and employees of Bethel with respect to the attendance of C.K.M. at school.

12           1.4    At all relevant times, Defendant Bethel had supervision and control of C.K.M.  
13           *in loco parentis.*

14           1.5    Defendant Thomas Siegel is and was, at all relevant times, the Superintendent  
15           of Bethel when C.K.M.’s federal and constitutional rights were violated. Upon information  
16           and belief, Defendant Siegel had actual knowledge of the previous sexual abuse and sexual  
17           misconduct of transferring special needs student D.M. in or about Autumn, 2011.

18           1.6    Defendant Robert Maxwell was, at all relevant times, the Director of Special  
19           Education Services for Bethel. Mr. Maxwell had discussions with Bethel’s General Counsel,  
20           William Coats, about the previous sexual abuse and misconduct of transferring special needs  
21           student D.M. in or about Autumn, 2011. As a result of these discussions, Mr. Maxwell had  
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1 actual knowledge of D.M.'s dangerousness regarding sexual harassment and sexual  
2 misconduct with fellow special needs students.

3 1.7 Defendant Nancy McKeeman was, at all relevant times, Bethel's representative  
4 with regard to the Individualized Education Plan (IEP) for special needs student D.M. Upon  
5 information and belief, Defendant McKeeman had actual knowledge of the previous sexual  
6 abuse and sexual misconduct of transferring special needs student D.M. in or about Autumn,  
7 2011. Upon information and belief, Ms. McKeeman also had actual knowledge of on-going  
8 logs and observation records of D.M.'s continuing sexual harassment, sexual abuse and sexual  
9 misconduct of C.K.M., as well as other students with special needs.

10 1.8 Defendant Megan Nelson was, at all relevant times, an Education Coordinator  
11 for Bethel. Ms. Nelson had actual knowledge of the previous sexual abuse and sexual  
12 misconduct of transferring special needs student D.M. in or about Autumn, 2011. Upon  
13 information and belief, Ms. Nelson also had actual knowledge of on-going logs and  
14 observation records of D.M.'s continuing sexual harassment, sexual abuse and sexual  
15 misconduct of C.K.M., as well as other students with special needs.

16 1.9 Defendant Clifford Anderson was, at all relevant times, Principal of Bethel  
17 High School during the 2012-2013 school year. Mr. Anderson had actual knowledge of on-  
18 going logs and observation records of D.M.'s continuing sexual harassment, sexual abuse and  
19 sexual misconduct of C.K.M., as well as other students with special needs.

20 1.10 Defendant Tom Gifford was, at all relevant times, Vice Principal of Bethel  
21 High School during the 2012-2013 school year. Mr. Gifford had actual knowledge of D.M.'s  
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continuing sexual harassment, sexual abuse and sexual misconduct against C.K.M., as well as other students with special needs.

1.11 Defendant Heidi Miller was, at all relevant times, Special Education Teacher at Bethel High School during the 2012-2013 school year. Ms. Miller had actual knowledge of D.M.'s continuing sexual harassment, sexual abuse and sexual misconduct against C.K.M., as well as other students with special needs.

1.12 Defendants John/Jane Does 1-5 are officials, administrators, faculty and/or staff are individuals whose names and addresses are unknown but who had actual knowledge of D.M.'s continuing sexual harassment, sexual abuse and sexual misconduct against C.K.M.

## II. JURISDICTION AND VENUE

2.1 Plaintiffs are residents of Nye County, Nevada. Defendant Bethel is a public corporation doing business in Pierce County, Washington. Upon information and belief, the individually named defendants were all officers, agents and or employees of Defendant Bethel at all relevant times to this action and are believed to be residents of Washington State.

2.2 Jurisdiction and venue are proper in this Court. Venue lies within Pierce County, Washington pursuant to RCW 4.12.025 in that the Defendant Bethel's principal place of business is Pierce County, Washington and the incidents at issue in this case occurred in Pierce County, Washington.

2.3 Plaintiffs submitted tort claim forms to the Bethel School District pursuant to RCW 4.96.020 and more than sixty (60) days have elapsed, thus conferring jurisdiction to the superior court.

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1           3.10 Upon information and belief, at that meeting(s) with Director Maxwell and  
 2           Superintendent Siegel, Attorney Coats told Defendant Maxwell and/or Defendant Siegel that  
 3           D.M. had sexually abused and/or was accused of sexually abusing four (4) children while  
 4           enrolled as a student at Clover Park.

5           3.11 Upon information and belief, Attorney Coats also told Defendant Maxwell  
 6           and/or Defendant Siegel that three (3) of those four children whom D.M. had abused and/or  
 7           was accused of sexually abusing were fellow special needs students, all of whom were  
 8           functioning at a cognitive level below D.M.

9           3.12 Upon information and belief, Attorney Coats also told Defendant Maxwell  
 10          and/or Defendant Siegel that according to Clover Park, D.M. required constant one-on-one  
 11          supervision at all times and that D.M.'s sexual misconduct was determined by Clover Park  
 12          not to be a function of D.M.'s disability.

13           3.13 Upon information and belief, Attorney Coats also told Defendant Maxwell  
 14          and/or Defendant Siegel that based upon D.M.'s past history of sexual predation at Clover  
 15          Park, D.M. posed a substantial risk to other special needs students with whom he was in class.

16           3.14 Following the expulsion of D.M. from Clover Park and his subsequent transfer  
 17          to Bethel, Bethel representative Nancy McKeeman participated in the creation of an  
 18          Individualized Education Plan (IEP) for special needs student D.M. Defendant McKeeman  
 19          had actual knowledge of the previous sexual abuse and sexual misconduct of transferring  
 20          special needs student D.M. in or about Autumn, 2011, and Defendant McKeeman had actual  
 21          knowledge that D.M. posed a substantial risk to other special needs students with whom he  
 22          was in class.

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1           3.15 Following the expulsion of D.M. from Clover Park and his subsequent transfer  
 2 to Bethel, Bethel Education Coordinator Megan Nelson also participated in the creation of an  
 3 Individualized Education Plan (IEP) for special needs student D.M. Defendant Nelson had  
 4 actual knowledge of the previous sexual abuse and sexual misconduct of transferring special  
 5 needs student D.M. in or about Autumn, 2011, and Defendant Nelson had actual knowledge  
 6 that D.M. posed a substantial risk to other special needs students with whom he was in class.

7           3.16 Beginning in Autumn 2012, D.M. was placed in the Special Education class at  
 8 Bethel High School with Special Education Teacher Heidi Miller. Ms. Miller had actual  
 9 knowledge of D.M.'s sexually predatory past. Ms. Miller also knew that Plaintiff C.K.M.  
 10 functioned at an extremely low cognitive level and that C.K.M.'s cognitive function was  
 11 significantly lower than D.M. Based upon her knowledge of D.M.'s past history of sexual  
 12 misconduct and sexual predation, and based on her knowledge of C.K.M.'s low level of  
 13 cognitive function, Ms. Miller knew that D.M. posed a substantial risk to C.K.M. and other  
 14 similarly situated students in class with D.M.

15           3.17 Also in Autumn 2012, Defendant Miller and the paraeducators and aides in  
 16 Ms. Miller's class began keeping an observational log of D.M.'s sexual harassment, sexual  
 17 abuse and sexual misconduct with other special needs students including C.K.M.

18           3.18 For example on September 21, 2012, the log noted "[D.M.] tried to kiss  
 19 [C.K.M.] during break time behind book shelf. They were directed that this is not OK at  
 20 school."

21           3.19 On October 6, 2012, the log recorded "[D.M.] followed [C.K.M.] into  
 22 classroom bathroom, immediately removed by staff. Discussion of appropriate behavior and

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bathroom rules was discussed with each student. During P.E. incident resulting in suspension occurred.”

3.20 On October 15, 2012, the log noted “[D.M.] trying his hardest to be with [C.K.M.] by himself.”

3.21 On October 23, 2012, the log states, “[D.M.] attempted to get [C.K.M.] alone behind bookcase after lunch. Was redirected to move into sight. Attempted to signal [C.K.M.] into bathroom after specialist. Students were separated. During 6<sup>th</sup> period students were separated.”

3.22 On October 31, 2012, the observational log noted that D.M. "Was sitting across from [C.K.M.] and [C.K.M.] pulled her shirt down to show him her chest. During 3<sup>rd</sup> period sat next to [C.K.M.], was redirected several times to move away kept moving back, was relocated to another area [,] 6<sup>th</sup> period touch [C.K.M.], said he was looking for the key she took. Was redirected. No sub today."

3.23 On November 1, 2012, "Tried to get behind bookcase with [C.K.M.] today was directed to other side of portable. During P.E. attempted to get away from other students and staff to meet [C.K.M.] out by porta potty, was intercepted."

3.24 On December 10, 2012, the log reads, "Right after 4<sup>th</sup> hr. [C.K.M.] went to the bathroom and [D.M.] followed her in there. I told him that behavior was not appropriate and that he would need to stay by my side for the 5<sup>th</sup> hour."

3.25 On December 14, 2012, the log noted, "After 5<sup>th</sup> period today on the way back to class [D.M.] and slowed down to [end] the of the line and he and [C.K.M.] kissed each other."

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1           3.26 The observational log contains note after note of sexual harassment and sexual  
2 misconduct by D.M. against C.K.M. and other special needs students in Ms. Miller's special  
3 education classroom.

4           3.27 During the 2012-2013 school year, Defendant Miller had actual knowledge  
5 that D.M. required one-on-one supervision, knew that D.M. was continually sexually  
6 harassing C.K.M., but actively kept D.M. in the same classroom with C.K.M. and failed to  
7 stop D.M.'s sexual harassment and sexual misconduct.

8           3.28 Defendant Miller notified Defendant Nelson, Bethel High School Principal  
9 Clifford Anderson and Vice Principal Tom Gifford on the on-going sexual harassment and  
10 sexual misconduct by D.M. and the lack of a one-on-one supervisor to control D.M. and stop  
11 him from sexually harassing and/or sexually abusing C.K.M. and other special needs students  
12 in Ms. Miller's special education classroom.

13           3.29 Despite actual knowledge of D.M.'s sexually harassing and sexually abusive  
14 behaviors to C.K.M. and other special needs students in Ms. Miller's special education  
15 classroom, Defendants Nelson, Anderson and Gifford all actively kept D.M. in the same  
16 classroom with C.K.M. and other special education students without one-on-one supervision  
17 for D.M.

18           3.30 Upon information and belief, John/Jane Does 1-5 were officials,  
19 administrators, faculty and/or staff who had actual knowledge of D.M.'s sexually predatory  
20 past, knew that he posed a substantial risk of sexual abuse, sexual harassment and sexual  
21 misconduct to C.K.M. and other special needs students, but actively kept D.M. in Ms. Miller's  
22 special education class without one-to-one supervision for D.M.

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3.31 Despite knowledge of D.M.'s past sexually predatory past, Bethel and the individually named defendants, including but not limited to Defendant Tom Gifford, blamed C.K.M. for the sexual assault and suspended her from school for the October 2012 portable toilet incident. The individual defendants also blamed C.K.M. for the sexual harassment and sexual misconduct by D.M.

3.32 As a result of being sexually assaulted, sexual harassed and being subjected to sexual misconduct at Bethel High School by D.M., C.K.M. has suffered trauma and anxiety, experienced emotional outbursts, increasingly acted out sexually and engaged in self-injurious behaviors.

## IV. CAUSES OF ACTION

## A. NEGLIGENCE -- ALL DEFENDANTS

4.1 Plaintiffs incorporate by reference each and every allegation contained in this complaint above as if fully set forth herein. Plaintiffs L.K.M. and J.M. sent their then-minor, intellectually disabled child C.K.M. to Bethel, relying on the Defendant to provide a reasonably safe environment for the education of their child, and to protect their daughter's physical and mental well-being during school hours. At all times material, Defendant Bethel assumed a duty of care for the safety and well-being of Plaintiff C.K.M., stood *in loco parentis* to its pupils and as such had a duty to protect Plaintiff C.K.M. from assaults including sexual assaults while C.K.M. was on school grounds.

4.2 Defendant Bethel had physical custody of Plaintiff C.K.M. during regular school hours at all times relevant, including the hours when Plaintiff was assaulted by minor

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1 D.M. Defendant Bethel also had physical custody and control of student D.M., assuming a  
2 non-delegable duty to control him and prevent him from abusing other students. As such,  
3 Defendant Bethel owed a duty to protect Plaintiff C.K.M. from physical harm, including  
4 assaults, while on school grounds during regular school hours, as well as a duty to control  
5 D.M. from harming C.K.M.

6  
7 4.3 Defendant Bethel breached their duty and was negligent in the supervision and  
8 the protection of its students, especially those with developmental disabilities, during school  
9 hours. Defendant Bethel failed to monitor students who it knew presented a risk of harm on  
10 school grounds, including minor D.M.

11  
12 4.4 Defendant Bethel violated its statutory duty set forth in RCW 28A and  
13 elsewhere, in failing to maintain good order, safety, and discipline within the district.

14  
15 4.5 Defendant did not use reasonable care to protect students from harmful actions  
16 of fellow students by failing to properly supervise and train its agents and employees, who  
17 knew of past inappropriate behaviors by D.M. but failed to follow policies that had been  
previously set in place.

18  
19 4.6 Defendant Bethel was an owner and operator of the premises commonly  
20 known as Bethel High School. Defendant Bethel did not maintain proper safety on the  
21 premises by failing to maintain proper security, monitor its students, and assess students who  
22 posed a risk of harm to others.

23  
24 4.7 The above-mentioned acts and omissions by Defendant increased the risk of  
harm to minors, and put them in a position of increased danger.

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1           4.8    Defendant Bethel was grossly negligent, or in the alternative, negligent, in the  
2 supervision, control, protection, and care of the pupils entrusted to it, including but not limited  
3 to, in failing to act with reasonable care to protect its children from harm and failing to train  
4 its employees to recognize and prevent such harm from occurring.

5           4.9    The Defendant Bethel's negligence and violation of its statutory duty were a  
6 proximate cause of injury and damage to Plaintiffs, including physical and mental pain,  
7 suffering, and anguish, and other treatment.

9           **B. VIOLATION OF WASHINGTON'S LAW AGAINST DISCRIMINATION  
10 (WLAD), RCW 49.60 – ALL DEFENDANTS**

11          4.10   Plaintiffs incorporate by reference each and every allegation contained in this  
12 complaint above as if fully set forth herein. RCW 49.60 commonly referred to as  
13 Washington's Law Against Discrimination or WLAD, and RCW 49.60.030 provides all  
14 individuals, including school students, to be free from discrimination because of sex or the  
15 presence of any sensory, mental or physical disability.

17          4.11   Despite knowledge of the on-going sexual abuse, sexual harassment and sexual  
18 misconduct suffered by female, special needs student C.K.M. by special needs classmate  
19 D.M., the defendants failed to protect C.K.M. from further sexual harassment and  
20 discrimination.

22          4.12   This ongoing, pervasive sexual harassment of C.K.M. by D.M. with the full  
23 knowledge of the defendants substantially interfered with C.K.M.'s right to an appropriate  
24 education free from discrimination, including but not limited to sexual harassment.

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1           4.13 C.K.M. was discriminated against by the defendants because of her gender and  
2 her mental and physical disabilities, in that the defendants allowed the sexual harassment to  
3 continue unabated, and continued to place sexually harassing student D.M. in the same  
4 classroom with C.K.M. despite knowledge of the pervasive sexual harassment and sexual  
5 misconduct of D.M. Upon information and belief, a similarly situated, typically functioning  
6 male student would not have been subjected to the same sexual harassment as that endured by  
7 C.K.M. at Bethel High School.

9  
10           **C. VIOLATION OF C.K.M.'S CIVIL RIGHTS UNDER THE FOURTEENTH  
11 AMENDMENT AND ENFORCED BY 42 U.S.C. § 1983 – DEFENDANTS  
12 SIEGEL, MAXWELL, McKEEMAN, NELSON, ANDERSON, GIFFORD,  
13 MILLER AND JOHN/JANE DOES 1-5.**

14           4.14 Plaintiffs incorporate by reference each and every allegation contained in this  
15 complaint above as if fully set forth herein. Under the Fourteenth Amendment's Due Process  
16 clause, Plaintiff C.K.M. has a right to be free from sexual abuse, sexual harassment and  
17 sexual misconduct which was caused by a "state-created" danger.

18           4.15 In this case, Defendants Siegel, Maxwell, McKeeman, Nelson, Anderson,  
19 Gifford, Miller and John/Jane Does 1-5 all participated in affirmative conduct which placed  
20 Plaintiff C.K.M. in danger and each individual defendant did so with deliberate indifference  
21 to a known or obvious danger.

22           4.16 Specifically Defendants Siegel, Maxwell, McKeeman, Nelson, Anderson,  
23 Gifford, Miller and John/Jane Does 1-5 had actual knowledge that special needs student D.M.  
24 was a sexual predator who was a particular threat to children functioning at a lower cognitive  
25

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1 level than himself. Defendants Siegel, Maxwell, McKeeman, Nelson, Anderson, Gifford,  
 2 Miller and John/Jane Does 1-5 also knew that D.M. required close, one-to-one supervision at  
 3 all times in order to protect fellow special needs students. Despite this knowledge,  
 4 Defendants Siegel, Maxwell, McKeeman, Nelson, Anderson, Gifford, Miller and John/Jane  
 5 Does 1-5 affirmatively placed D.M. in a special education classroom at Bethel High School  
 6 without close supervision and without one-to-one supervision. Further, Defendants Siegel,  
 7 Maxwell, McKeeman, Nelson, Anderson, Gifford, Miller and John/Jane Does 1-5 exposed  
 8 C.K.M., and the other students in the Bethel High School special needs classroom, to D.M.  
 9 without close supervision and one-on-one supervision with full knowledge that known and  
 10 obvious danger posed by D.M.

12                   4.17 As a direct and proximate result of Defendants Siegel, Maxwell, McKeeman,  
 13 Nelson, Anderson, Gifford, Miller, and John/Jane Does 1-5 actively placing D.M. in a special  
 14 education classroom at Bethel High School without close supervision and one-on-one  
 15 supervision, C.K.M. was sexually abused and sexually harassed by D.M.

16                   4.18 In addition, Defendants Siegel, Maxwell, McKeeman, Nelson, Anderson,  
 17 Gifford, Miller and John/Jane Does 1-5 had actual knowledge through the observation logs  
 18 kept of D.M.'s behavior in Heidi Miller's Bethel High School Special Education class that  
 19 C.K.M. and other students were suffering from sexual abuse, sexual harassment and sexual  
 20 misconduct by D.M. over the course of the 2012-2013 school year.

21                   4.19 Despite actual knowledge of on-going sexual abuse, sexual harassment and  
 22 sexual misconduct by D.M. against C.K.M., Defendants Siegel, Maxwell, McKeeman,  
 23

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1 Nelson, Anderson, Gifford, Miller and John/Jane Does 1-5 acted with deliberate indifference  
2 by doing nothing to effectively stop D.M. or protect C.K.M., including but not limited to  
3 providing ensuring that D.M. always had a mandatory one-to-one supervisor as required by  
4 D.M.'s IEP, failing to report incidents of sexual harassment and sexual misconduct to law  
5 enforcement or child protective services and failing to remove D.M. (or C.K.M.) from the  
6 same classroom when they knew they were not protecting C.K.M. from the continuing  
7 abusive conduct by D.M.

9           4.20 As a direct and proximate result of Defendants Siegel, Maxwell, McKeeman,  
10 Nelson, Anderson, Gifford, Miller, and John/Jane Does 1-5 actively placing D.M. in a special  
11 education classroom at Bethel High School despite knowledge of on-going sexual abuse,  
12 sexual harassment and sexual misconduct by D.M. against C.K.M., C.K.M. continued to  
13 suffer the effects of on-going sexual harassment and abuse.

15           **D. VIOLATION OF C.K.M.'S CIVIL RIGHTS UNDER THE FOURTEENTH  
16 AMENDMENT AND ENFORCED BY 42 U.S.C. § 1983 UNDER MONELL-  
17 DEFENDANT BETHEL**

18           4.21 Plaintiffs incorporate by reference each and every allegation contained in this  
19 complaint above as if fully set forth herein. Defendant Bethel is liable for its execution of  
20 policies, customs and practices, as well as for its actions in failing to adequately train,  
21 monitor, or supervise its agents and employees to ensure the safety of its students, including  
22 C.K.M.

24           4.22 These failures by Defendant Bethel were a moving force behind the sexual  
25 abuse, sexual harassment and sexual misconduct suffered by C.K.M.

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1           4.23 As illustrated above, these failures occurred at Bethel's highest levels,  
 2 including its Superintendent and its Director of Special Education, and the on-going nature of  
 3 Bethel turning a blind eye to both the substantial risked posed by D.M. to other special needs  
 4 students and the actual knowledge of on-going sexual abuse, sexual harassment and sexual  
 5 misconduct by D.M. against C.K.M. and other students with special needs was done with  
 6 deliberate indifference to the wellbeing and safety of Plaintiff C.K.M., and done in violation  
 7 of the Due Process clause of the Fourteenth Amendment in violation of 42 U.S.C. § 1983.  
 8

9           **E. VIOLATION OF C.K.M.'S RIGHTS UNDER TITLE IX AND SECTION 1983  
 10           THROUGH THE EQUAL PROTECTION CLAUSE– ALL DEFENDANTS**

11           4.24 Plaintiffs incorporate by reference each and every allegation contained in this  
 12 complaint above as if fully set forth herein. Bethel and the individual defendants are liable  
 13 under both Title IX for its actions in creating and perpetuating the sexually harassing and  
 14 hostile school environment.

16           4.25 Plaintiff C.K.M. has the right to bring an action against the school district for  
 17 its violations of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) because  
 18 Bethel and its officials had actual knowledge of the sexual abuse, sexual harassment and  
 19 sexual misconduct by D.M. against C.K.M. and other special needs students in the Bethel  
 20 High School special education class.

22           4.26 Because Bethel failed to take immediate, effective remedial steps to resolve the  
 23 sexual harassment in spite of its actual knowledge of the abuse, and instead acted with  
 24 deliberate indifference toward Plaintiff C.K.M. and other similarly situated student.

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1           4.27 The result of Bethel's deliberate indifference toward the sexual harassment  
 2 suffered by C.K.M. was to exclude her from participation in, being denied the benefits of, and  
 3 being subjected to discrimination in Bethel's education program, in violation of Title IX.  
 4

5           4.28 Plaintiffs incorporate by reference each and every allegation contained in this  
 6 complaint above as if fully set forth herein. Under *Fitzgerald v. Barnstable School*  
 7 *Committee*, 55 U.S. 246 (2009), the United States Supreme Court held that Title IX does not  
 8 preclude a concurrent claim for Equal Protection violations under 42 U.S.C. 1983, including  
 9 in the peer harassment context. This is because while Title IX only covers institutions and not  
 10 individuals, the 1983 remedy allows plaintiffs to sue individual defendants unless immunity  
 11 applies.  
 12

13           4.29 Here, Bethel and individual Defendants Siegel, Maxwell, McKeeman, Nelson,  
 14 Anderson, Gifford, Miller and John/Jane Does 1-5 had actual knowledge of both the  
 15 substantial risk posed by D.M. to other students with special needs and actual knowledge of  
 16 pervasive sexual abuse, sexual harassment and sexual misconduct by D.M. against C.K.M.  
 17

18           4.30 Upon information and belief, each of these individual defendants above had  
 19 the authority to take corrective action in response to the pervasive sexual harassment and  
 20 sexual misconduct suffered by C.K.M. but responded with deliberate indifference.  
 21

22           4.31 In addition, Bethel violated the Equal Protection Clause in its practice of  
 23 failing to enforce its policies on peer-to-peer sexual harassment in its special education  
 24 classroom at Bethel High School.  
 25  
 26

FIRST AMENDED COMPLAINT FOR DAMAGES

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4.32 The violations of C.K.M.'s rights to be free from sexual harassment and sexual abuse by all defendants was unconstitutional discrimination based on C.K.M.'s gender and her mental and physical disabilities.

## V. DAMAGES

5.1 As a result of Defendant's tortious acts and omissions, Plaintiff C.K.M. experienced mental and emotional suffering during and after the sexual assaults. This claim is brought on behalf of Plaintiffs L.K.M., J.M. and C.K.M. for general and special damages arising out of assaults and failure to protect and supervise on this case. These damages include the pain and suffering, anxiety, emotional distress, and humiliation that Plaintiff C.K.M. has suffered and will continue to endure for years to come. This claim is also brought for Plaintiffs L.K.M. and J.M. who have suffered damages from emotional distress and derivative injuries from the damage to the parent-child relationship, compensable injuries codified in statute at RCW 4.24.010.

5.2 In addition, as a result of the defendants' violations of Plaintiff C.K.M.'s statutory rights under RCW 49.60 (WLAD), C.K.M. experienced mental and emotional distress, and a loss to the full benefits of Bethel's education program.

5.3 As a result of the defendants' violations of her federal statutory and constitutional rights, Plaintiff C.K.M. has suffered mental and emotional distress and a loss to the full benefits of Bethel's education program.

## VI. JURY DEMAND

6.1 Plaintiffs demand a trial by jury on all issues so triable.

## FIRST AMENDED COMPLAINT FOR DAMAGES

## VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendant as follows:

1. For such general and special damages as will be proven at the time of trial, with interest thereon;

2. Plaintiffs' reasonable costs and attorneys' fees incurred in maintaining this action as allowed by RCW 49.60;

3. Plaintiffs costs and attorneys' fees as allowed by 42 U.S.C. § 1988, Title IX and all other applicable bases for an award of attorneys' fees and costs'

4. Punitive damages as allowed by 42 U.S.C. § 1983 and under any other provision of law for which punitive damages may be awarded;

5. Pre and post-judgment interest as applicable; and

6. Such other and further relief as this Court deems just and equitable under the circumstances of this case.

DATED this 27<sup>th</sup> day of April, 2018.

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Attorney for Plaintiffs

4821-7443-6623, v. 1

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1 **DECLARATION OF SERVICE**

2 I, **Kim Snyder**, hereby declare under penalty of perjury under the laws of the State of  
3 Washington that I am employed at Pfau Cochran Vertetis Amala PLLC, and that on today's  
4 date I served the foregoing via Email by directing delivery to the following individuals:  
5

6

7 Jerry J. Moberg  
8 Jerry J. Moberg & Associates  
9 124 Third Avenue SW  
10 Ephrata, WA 98823

11 **SENT VIA EMAIL**

12 DATED this 27th day of April, 2018.

13

14

15   
16 Kim Shyder  
17 Legal Assistant

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FIRST AMENDED COMPLAINT FOR DAMAGES  
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